

DISCUSSION

A. Standard of Review

This court may entertain a petition for a writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 USC § 2254(a).

It shall "award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." Id § 2243.

B. Legal Claims

Petitioner seeks federal habeas corpus relief from the BPH's January 24, 2006 decision to deny him parole, and a subsequent hearing for one year, on the ground that it does not comport with due process. Among other things, petitioner claims that the decision is not supported by some evidence in the record. Liberally construed, petitioner's claim appears colorable under § 2254 and merits an answer from respondent. See Sass v Cal Bd of Prison Terms, 461 F3d 1123, 1127-29 (9th Cir 2006) (finding that refusal to set parole date for prisoner with 15-to-life sentence implicated prisoner's liberty interest in release on parole which cannot be denied without adequate procedural due process protections).

CONCLUSION

For the foregoing reasons and for good cause shown,

1. The clerk shall serve by certified mail a copy of this order and the petition and all attachments thereto on respondent and respondent's attorney, the Attorney General of the State of California. The clerk also shall serve a copy of this order on petitioner.

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1 2. Respondent shall file with the court and serve on petitioner, within
2 60 days of the issuance of this order, an answer conforming in all respects to Rule
3 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of
4 habeas corpus should not be issued. Respondent shall file with the answer and
5 serve on petitioner a copy of all portions of the state trial record that have been
6 transcribed previously and that are relevant to a determination of the issues
7 presented by the petition.

8 If petitioner wishes to respond to the answer, he shall do so by filing a
9 traverse with the court and serving it on respondent within 30 days of his receipt
10 of the answer.

11 3. Respondent may file a motion to dismiss on procedural grounds in
12 lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the
13 Rules Governing Section 2254 Cases. If respondent files such a motion,
14 petitioner shall file with the court and serve on respondent an opposition or
15 statement of non-opposition within 30 days of receipt of the motion, and
16 respondent shall file with the court and serve on petitioner a reply within 15 days
17 of receipt of any opposition.

18 4. Petitioner is reminded that all communications with the court must
19 be served on respondent by mailing a true copy of the document to respondent's
20 counsel. Petitioner must also keep the court and all parties informed of any
21 change of address.

22 SO ORDERED.

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24 VAUGHN R WALKER
25 United States District Chief Judge